

ESTTA Tracking number: **ESTTA439862**

Filing date: **11/07/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---------------------------|---|
| Proceeding | 92054573 |
| Party | Defendant Ortronics, Inc. |
| Correspondence Address | ORTRONICS INC 125 EUGENE O'NEILL DRIVE NEW LONDON, CT 06320 UNITED STATES |
| Submission | Answer |
| Filer's Name | Susan M. Schlesinger |
| Filer's e-mail | mgarratana@mccarter.com,sschlesinger@mccarter.com,jwhitney@mccarter.com |
| Signature | /Susan M. Schlesinger/ |
| Date | 11/07/2011 |
| Attachments | 2112_001- Answer to Petition for Cancellation 110711.pdf (5 pages)(149648 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration Nos.: 3,998,542 and 3,998,543
For the Marks: LAYER ZERO and LAYER 0
Issued on: July 19, 2011

| | | |
|-------------------------------|---|---------------------------|
| LAYERZERO POWER SYSTEMS, INC. |) | |
| |) | Cancellation No. 92054573 |
| v. |) | |
| |) | |
| ORTRONICS, INC. |) | |
| |) | |
| Registrant. |) | |

REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION

Registrant Ortronics, Inc. ("Ortronics" or "Registrant") is a corporation organized and existing under the laws of the State of Connecticut with its place of business at 125 Eugene O'Neill Drive, New London, Connecticut 06320. Registrant, by and through its attorneys, answers the Petition for Cancellation in connection with the above-referenced matter as follows.

With respect to the grounds for cancellation, Registrant responds as follows:

Grounds for Cancellation

1. Admitted.
2. Admitted.
3. Registrant is without knowledge or information sufficient to form a belief

as to the truth of the allegations of Paragraph 3 of the Petition for Cancellation, and therefore denies those allegations.

4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Petition for Cancellation, and therefore denies those allegations.

5. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Petition for Cancellation, and therefore denies those allegations.

6. Registrant admits that the Examining Attorney to whom the '998 Application was assigned for processing identified the applications that subsequently matured into the '542 and '543 Registrations. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6 of the Petition for Cancellation, and therefore denies those allegations.

7. Admitted.

8. Admitted.

9. Registrant denies the allegations of Paragraph 9.

10. Registrant denies the allegations of Paragraph 10.

11. Registrant denies the allegations of Paragraph 11.

12. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Petition for Cancellation, and therefore denies those allegations.

13. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Petition for Cancellation, and therefore denies those allegations.

14. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Petition for Cancellation, and therefore denies those allegations.

15. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Petition for Cancellation, and therefore denies those allegations.

16. Registrant denies the allegations of Paragraph 16.

17. Registrant admits that the trademark applications which matured into U.S. Registration Nos. 3,998,542 and 3,998,543 were filed on September 26, 2008 and that the date of first use claimed on both applications is November 5, 2009. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 17 of the Petition for Cancellation, and therefore denies those allegations.

18. Registrant denies the allegations of Paragraph 18.

19. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Petition for Cancellation, and therefore denies those allegations.

Affirmative Defenses

1. The Petition for Cancellation fails to state a claim upon which relief may be granted.

2. There is no likelihood of confusion, mistake or deception of the public between the Petitioner's LAYERZERO POWER SYSTEMS, INC. mark and the LAYER ZERO and LAYER 0 marks that are the subject of Registrant's U.S. Trademark Registration Nos. 3,998,542 and 3,998,543.

3. Petitioner has unreasonably delayed in asserting its alleged rights and is barred by the doctrines of laches, acquiescence and/or estoppel from pursuing the Petition for Cancellation.

4. Petitioner is barred by the doctrine of unclean hands from pursuing the Petition for Cancellation .

5. Upon information and belief, Petitioner cannot claim priority over Registrant and its LAYER ZERO and LAYER 0 trademarks.

WHEREFORE, Registrant requests that the Trademark Trial and Appeal Board dismiss with prejudice the Petition for Cancellation.

Respectfully submitted,

Date: November 7, 2011

By: /Mark D. Giarratana/
Mark D. Giarratana
Susan M. Schlesinger
McCarter & English LLP
185 Asylum Street
CityPlace I
Hartford, CT 06103
860.275.6700
860.724.3397 (fax)
mggiarratana@mccarter.com

Attorney for Registrant
Ortronics, Inc.

CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that a copy of the foregoing Registrant's Answer to Petition for Cancellation was served on the Petitioner on the date indicated below by depositing the same with U.S.P.S. First Class Mail, postage prepaid to:

Raymond Rundelli, Esq.
Juliet P. Castrovinci, Esq.
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114-2688

and further certifies that the aforementioned Registrant's Answer to Petition for Cancellation was filed with the Trademark Trial and Appeal Board on the date indicated below online through the ESTTA system of the United States Patent and Trademark Office.

Dated: November 7, 2011

/Susan M. Schlesinger/
Susan M. Schlesinger